IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 27110 of 2007(B)

PETITIONER:

V.MITHRADAS,PROPRIETOR,
ATTUKAL TRADERS,PATTOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.RAVINDRAN.

RESPONDENTS:
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1. **THE REGIONAL TRASPORT AUTHORITY,**
   REP. BY ITS SECRETARY,
   THIRUVANANTHAPURAM.

2. **THE SECRETARY,**
   RTA,THIRUVANANTHAPURAM.

3. **THE MANAGING DIRECTOR,**
   RKV MOTORS AND TIMBERS PVT LTD,
   RKV BUILDINGS.
   THIRUVANANTHAPURAM.

BY ADV. SRI.MILLU DANDAPANI,
GOVT. PLEADER SRI. I.V. PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007,THE COURT ON 01/10/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.27110/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT DTD. 26/08/06 IN W.P. NO. 26143/06.

EXT.P.2: COPY OF THE JUDGMENT DTD. 05/02/07 IN MVAA. NO. 28, 33 & 44 OF 2007.

EXT.P.3: COPY OF THE JUDGMENT DTD. 08/08/07 IN W.P. NO. 15009/07.

EXT.P.4: COPY OF THE APPLICATION FOR TEMPORARY PERMIT ON 13/08/07.

EXT.P.4.A: COPY OF THE ACKNOWLEDGMENT RECEIPT.

EXT.P.5: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO R.1. DTD. 25/08/07.

EXT.P.6: COPY OF THE TEMPORARY PERMIT ISSUED BY THE R.1. DTD. 04/09/07.

RESPONDENT'S EXHIBITS:

EXT. R3.(1): COPY OF THE PERMIT NO. P.TEMP. NO. C2-1.2779.07 DTD. 12/09/2007 ISSUED BY THE R.2. TO THE R.3.

EXT.R3.(2): COPY OF THE 1ST PAGE OF MEETING OF THE AGENDA DTD. 19/09/2007 OF THE R.1.

EXT.R3.(2) (A): COPY OF THE RELEVANT EXTRACT OF AGENDA OF THE MEETING OF THE R.1. DTD. 19/09/2007.

//TRUE COPY//

prv.

ANTONY DOMINIC, J.

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W.P.(C) No. 27110 OF 2007
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Dated this the 1st October, 2007

J U D G M E N T

The prayers in this writ petition are to quash Ext.P6 and to direct the 2nd respondent to not to issue any temporary permit until a decision is taken by the 1st respondent.

2. There was a default vacancy in Nettayam – Kulathara, a city route in Thiruvananthapuram while the petitioner was operating on a temporary permit in that default vacancy, there were other applicants for this route. In Ext.P1 judgment, this court directed to consider and pass orders on all applications received and grant permit to the applicant who is found to be the most meritorious one. Accordingly, applications were considered and eventually temporary permit was granted to the 3rd respondent. This was challenged before the Tribunal and in Ext.P2 judgment, the Tribunal allowed the appeal and directed that all applications be considered by the 1st respondent excluding the one submitted by the 3rd respondent. Ext.P2 judgment was challenged in Writ Petition (Civil) No.15009 of 2007 and connected cases and the cases were disposed of by Ext.P3 judgment directing the 1st respondent to consider all fresh applications in accordance with law. In pursuance to Ext.P3, among the applicants, the 2nd respondent chose the 3rd respondent

and Ext.P6 is the temporary permit issued for the period from 24.08.2007 to 12.09.2007. It is challenging Ext.P6 that this writ petition has been filed.

3. 3rd respondent would submit that the writ petition has become infructuous since the period of Ext.P6 Temporary Permit has expired on 12.09.2007 and a further temporary permit (Ext.R3(1)) valid to till 02.10.2007 was issued. It is also stated that in pursuance to Ext.P3 judgment of this Court, the 1st respondent has considered all applications in its meeting held on 19.09.2007 and that orders are awaited. It is also contended that despite the contention of the petitioner that the 3rd respondent is ineligible to be issued temporary permit, while disposing of the cases by Ext.P3 judgments, there was no direction to exclude the application of the 3rd respondent and hence the 3rd respondent is entitled to be issued the Temporary Permit.

4. The Learned Counsel for the writ petitioner raised mainly three contentions. According to him, in terms of provisions of the Act and the Rules, the respondents are bound to assess the comparative merit of the applicants before granting permit and that such an assessment of merit has not been done in this case before issuing the Temporary Permit. It is also contended that by Ext.P3 judgment, while disposing of the writ petitions filed against Ext.P2, this court had directed the 1st respondent to consider the applications and that inspite of it, without placing the matter

before the 1st respondent, the 2nd respondent granted permit which is unauthorized. He also argued that Ext.P6 temporary permit has been granted to do substitute service and that such a permit can be granted only in circumstances to which Rule 182 of the Kerala Rules apply. These contentions are refuted by the counsel for the 3rd respondent.

5. I have considered the submissions made, it is true that Ext.P6 does not show that there has been an assessment of comparative merits of the applicants. This, in my view, should have been done. In Ext.P3 judgment, this court had directed that all applications received shall be considered by the RTA Thiruvananthapuram, the 1st respondent in that case. Therefore, the RTA itself should have considered the applications and even if the Secretary is competent by delegation that was irrelevant in so far as this case is concerned. From Ext.P6 it is obvious that Temporary Permit has been issued by the Secretary, the 2nd respondent herein. On the other hand he should have placed the matter for the consideration of the 1st respondent which has not been done. Ext.P6 also shows that the 3rd respondent has been permitted to do substitute service in place of KL 01/D 9953. Substitute service is permissible only in terms of Rule 182 of the Kerala Rules and the facts show that the said rule is inapplicable. If that be so, a temporary permit, could not have ben granted to do substitute service. Thus, I find force in the submissions made by the learned counsel for the writ petition.

6. Be that as it may, it is evident from Ext.P6 itself that the period of this permit has expired on 12.09.2007 and the 3rd respondent has been granted temporary permits for subsequent periods as well. In the meantime, the RTA has also concluded hearing on 19.09.2007. If that be so, there is no point in quashing Ext.P6, at this distance of time. Petitioner has also not sought any prayer to quash Ext.R3(a) or subsequent temporary permit, if any, granted to the 3rd respondent.

In these circumstances I dispose of the writ petition directing that, if any temporary permit is hereafter granted for the route Nettayam – Kulathara the same shall be done considering the relative merits of the applicants and that too only by the 1st respondent and in any event not by the 2nd respondent. Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

pr/jan.